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INTERSTATE COMMERCE COMMISSION ITEL Rail Corporation

55 Francisco Street
 San Francisco, California 94133
 (415) 984-4000
 (415) 781-1035 Fax

February 7, 1989

Hon. Noreta R. McGee
 Secretary
 Interstate Commerce Commission
 Washington, DC 20423

File
 Date 2-8-89
 Fee \$ 13.00

ICC Washington, D. C.

Re: Amendment No. 2 to Railroad Car Lease Agreement dated as of August 1, 1978, between ITEL Railcar Corporation, as successor in interest to United States Railway Leasing Company and assignee of Evans Railcar Leasing Company, and Occidental Barging Corporation

Dear Ms. McGee:

On behalf of ITEL Rail Corporation, the above instrument, in three (3) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$13 recordation fee.

Please record this Amendment under the Assignment of Lease Agreement dated as of December 30, 1988, between Occidental Barging Corporation and Island Creek Corporation, which is being filed with the ICC simultaneously this date.

The parties to the aforementioned instrument are listed below:

ITEL Railcar Corporation (Lessor)
 55 Francisco Street
 San Francisco, California 94133

Occidental Barging Corporation (Lessee)
 c/o Island Creek Corporation
 P.O. Box 12029
 Lexington, Kentucky 40507

This Amendment adds to the Lease Agreement ninety-four (94) 3600 cubic foot, 100-ton open-top hoppers bearing reporting marks USLX 46000-46099 (n.s.) and amends the terms of the Lease Agreement with respect to one hundred nine (109) 3600 cubic foot, 100-ton open-top hoppers bearing reporting marks EELX 10000-10112 (n.s.) still subject thereto.

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 MOTOR OPERATING UNIT

Hon. Noreta R. McGee
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Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

patricia schumacker

Patricia Schumacker
Legal Department

AMENDMENT NO. 2

TO RAILROAD CAR LEASE

16200-A
REGISTRATION NO. 1700 1988
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INTERSTATE COMMERCE COMMISSION

THIS AMENDMENT NO. 2 (the "Amendment") to that certain Railroad Car Lease Agreement dated as of August 1, 1978 (the "Lease") between United States Railway Leasing Company ("United") and OCCIDENTAL BARGING CORPORATION ("Lessee"), a California corporation, is made as of this 30th day of December, 1988, by and between ITEL RAILCAR CORPORATION ("Lessor"), a Delaware corporation, as assignee of Evans Railcar Leasing Company, United's successor in interest, and Lessee.

R E C I T A L S:

- A. United and Lessee were parties to the Lease pursuant to which United leased to Lessee one hundred fourteen (114) open-top hopper railcars bearing reporting marks EELX 10000-10113 as set forth on Schedule 1 dated August 2, 1978, ("Schedule 1") to the Lease.
- B. United and Lessee were also parties to the Lease Agreement dated July 18, 1977 (the "1977 Lease"), pursuant to which United leased to Lessee one hundred (100) open-top hopper railcars bearing reporting marks USLX 46000-46099 as set forth on Exhibit A to the 1977 Lease.
- C. The six (6) railcars bearing the reporting marks USLX 46005, 46044, 46052, 46055, 46086, and 46093, and the five (5) railcars bearing the reporting marks EELX 10026, 10098, 10099, 10106, and 10113 have been destroyed and are no longer subject to the 1977 Lease or the Lease.
- D. Through the letter dated November 4, 1988 (which served as the Third Amendment to the 1977 Lease and the First Amendment to the Lease), the terms of the Lease and of the 1977 Lease have been extended to include the period from November 11, 1988 through and including the earlier of (1) January 16, 1989, or (2) the date that a new lease agreement is fully executed between Itel Railcar Corporation and Island Creek Corporation.
- E. In lieu of a new lease agreement between Itel Railcar Corporation and Island Creek Corporation, Lessor and Lessee desire to add to the Lease the ninety-four (94) open-top hopper railcars that are subject to the 1977 Lease and to amend the terms of the Lease with respect to said equipment and to the one hundred nine (109) open-top hopper railcars that remain subject to the Lease.

NOW, THEREFORE, the parties hereto agree to amend the Lease as follows:

1. All terms defined in the Lease shall have the meanings defined therein when used in this Amendment, except that "United", when used herein and in the Lease, shall mean IteL Railcar Corporation ("Lessor").
2. Upon its full execution, Schedule No. 1.A. shall replace Schedule 1 and the Rider thereto to the Lease. Schedule 1 and the Rider thereto shall be deleted in their entirety.
3. The following shall be added to Section 10 of the Lease:

"During the term of the Lease, Lessor may, solely at Lessor's expense, replace any or all Cars with substitute cars so long as:

 - (a) The substitute cars are of substantially similar description and specification to the specification set forth in the applicable Schedule which describes the Cars being substituted for.
 - (b) The substitute cars are equal to or better than the Cars being substituted for in terms of condition, quality and age.
 - (c) The substitute cars have all the special features and improvements which have been added or made by Lessee to the Cars being substituted for.
 - (d) Lessor gives Lessee thirty (30) days' prior written notice that it intends to effect such a substitution.
 - (e) The substitution process does not interrupt Lessee's operations. Lessee shall, at all times, be entitled to the unhindered service of no less than the number of Cars under lease at the time of substitution."
4. The words "such as liens in favor of landowners for royalty payments, employees' liens, unemployment compensation liens, tax liens and mechanic's liens and materialman's liens" shall be deleted from the last sentence of Section 13 of the Lease.
5. The sentence "The term 'United' shall mean and include any subsidiary, parent or affiliated corporation for all purposes of this Paragraph 14." shall be deleted from Section 14 of the Lease.
6. Section 17 of the Lease shall be amended as follows:
 - a. The first sentence of Section 17 shall be deleted and replaced by:

"As soon as practicable after the expiration or termination of this Lease with respect to any Car (other than pursuant to Paragraph 16 hereof) and in any event no later than ninety (90) days thereafter, the condition of said Car shall be determined by joint inspection by the parties, and Lessee shall, at its sole cost and expense, deliver possession of such Car to Lessor upon such storage tracks

or to any connecting carrier within the States of Virginia and West Virginia and the Commonwealths of Kentucky and Pennsylvania as the Lessor may designate. Such Car shall be deemed surrendered to Lessor's possession on the date such Car is delivered to the location or connecting carrier designated by Lessor."

- b. The words "normal wear and tear" shall be replaced by the words "normal wear" in the second sentence of Section 17.
7. The words "upon termination of the Lease" shall be deleted from the first line of Subsection 18.(b).
8. Subsection 19.(a) shall be deleted and replaced by the following:
- "(a) Lessee shall have no right to assign or sublease or loan any of the Cars without the prior written consent of Lessor, which consent shall not be unreasonably withheld; ~~with regard only to subleasing or loaning cars~~ provided, however, that Lessee shall have the right to sublease or assign any of the Cars, for use within the continental limits of the United States, to Lessee's parent Occidental Petroleum Corporation or any affiliate of Lessee with a net worth equal to or greater than Lessee's which is not a railroad, provided that such assignment or sublease will not relieve Lessee from any liability or undertaking hereunder. Any such sublease or assignment shall be upon terms which are in compliance with all applicable Interchange Rules, tariffs, regulations, laws, and all terms and conditions of this Lease. In the event that under any such sublease or assignment, excluding any sublease or assignment to an Occidental Petroleum affiliate, Lessee receives rentals or other payments in excess of the monthly rental for the Cars, Lessee shall remit to Lessor all such excess amounts in addition to the monthly rental."
9. The last paragraph of Section 19 shall be deleted and replaced by the following:
- "The making of an assignment or sublease by Lessee shall not serve to relieve Lessee of any liability or undertaking under this Lease."
10. Section 21 of the Lease shall be deleted and replaced by the following:
- "21. Notice. Any notice required or permitted to be given pursuant to the terms of this Lease shall be properly given when made in writing, deposited in the United States mail, registered or certified, postage prepaid, addressed to:

Lessor: Itel Railcar Corporation
55 Francisco Street
San Francisco, CA 94133
Attn: President

Lessee: Island Creek Corporation
250 West Main Street
P.O. Box 11430
Lexington, KY 40575-1430
Attn: Vice President-Finance

or at such other addresses as each party may from time to time designate in writing to the other."

11. The first sentence of Section 22 shall be deleted and replaced by the sentence, "Lessor agrees to assign to Lessee only for the term of this Lease, such rights as it may have under warranties, if any, which it may have received from the manufacturer of any Cars or parts therefor and shall, at Lessee's expense, cooperate with Lessee and take such action as may be reasonably requested to enable Lessee to enforce such rights."
12. The phrase "State of Illinois" in Section 23 shall be deleted and replaced by the phrase "State of California".
13. The first sentence of Section 2 to Rider 1 to the Lease shall be deleted and replaced by, "Lessor shall advise Lessee of Lessor's estimate of the cost to Lessee of any individual item of Repair Work which appears to be out of the ordinary for railcars in the same service, except for running repairs performed by a railroad."
14. A new Section 31 shall be added to the Lease, as follows:

"31. Insurance

- A. Lessee shall, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained: (i) all-risk, physical loss and damage insurance with respect to the Cars while the Cars are on Lessee's property or in Lessee's care, custody or control; and (ii) public liability insurance with respect to third party personal injury and property damage, in each case with such deductibles, in such amounts, against such risks and with such insurance companies as is normally carried by corporations of established reputation engaged in the same or a similar business as Lessee and similarly situated to Lessee, but in any event with no greater deductibles and at least comparable in amounts and against risks customarily insured against by Lessee with respect to equipment it owns similar in nature to the Cars. All insurance policies shall be taken out in the name of Lessee and shall name Lessor, any financing party designated by Lessor by written notice to Lessee ("Financing Party"), and any assignee of Lessor as additional named insureds and as loss-payees. Said policies shall provide that Lessor, Financing Party and any assignee of Lessor shall receive thirty (30) days' prior written notice of any material changes in coverage or cancellation thereof. In the event that Lessee fails to place insurance, or that said insurance expires, Lessor has the

right to purchase the insurance described above and Lessee shall pay the cost thereof. With respect to the additional insureds, Lessee's insurance policies shall be primary to any other valid and available insurance ("Other Insurance") effected by, or for, the additional insureds. Lessee shall require its insurer specifically to waive subrogation, claim and recovery with respect to any Other Insurance. Any and all deductibles in the described policies shall be paid by Lessee.

- B. Each policy obtained by Lessee pursuant to this Section shall be in accordance with the above terms and conditions, which terms and conditions shall be set forth on the Certificate of Insurance provided to Lessor pursuant to this Subsection. Lessee shall furnish to Lessor concurrently with execution hereof, and at intervals of not more than twelve (12) calendar months from execution hereof, Certificates of Insurance evidencing the aforesaid insurance."

15. A new Section 32 shall be added to the Lease, as follows:

"32. Storage

In the event that any Car(s) is not in use while subject to this Lease, Lessee shall be responsible for storing any such Car(s) on its property, at its expense, or for paying all costs associated with storing such Car(s) at another location. If Lessor pays any such storage-related costs, Lessee shall reimburse Lessor for such costs within ten (10) days of receiving an invoice from Lessor for such costs."

16. Except as expressly modified by this Amendment, all terms and provisions of the Lease shall remain in full force and effect.
17. This Amendment may be executed by the parties hereto in any number of counterparts and all said counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL RAILCAR CORPORATION

By: 

Title: President

Date: 1/10/89

OCCIDENTAL BARGING CORPORATION

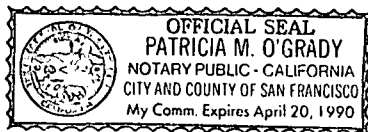
By: 

Title: VICE PRESIDENT AND TREASURER

Date: 1/5/89

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

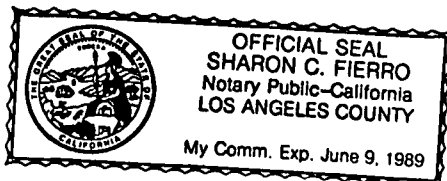
On this 10th day of January, 1988⁹, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Railcar Corporation, that the foregoing Amendment No. 2 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Patricia M. O'Grady
Notary Public

STATE OF California)
) ss:
COUNTY OF Los Angeles)

On this 5th day of January, 1988, before me personally appeared R.B. Carrick to me personally known, who being by me duly sworn says that such person is Vice President and Treasurer of Occidental Barging Corporation, that the foregoing Amendment No. 2 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Sharon C. Fierro
Notary Public

SCHEDULE NO. 1.A.

THIS SCHEDULE NO. 1.A. dated December 30, 1989, to the Railroad Car Lease Agreement dated August 1, 1978, (the "Lease") by and between Ite1 Railcar Corporation ("Lessor"), as assignee of United States Railway Leasing Company ("United"), and **OCCIDENTAL BARGING CORPORATION** ("Lessee"), replaces Schedule 1 dated August 2, 1978 to the Lease.

TYPE AND DESCRIPTION OF CAR:

100-ton, 3600 cu.ft., four-pocket, open-top hopper

NUMBER OF CARS:

two hundred three (203)

INTERIOR EQUIPMENT:

None

SPECIAL LININGS:

None

PERMITTED LADING USE:

Coal, or other bulk, non-corrosive commodities

REPORTING MARKS AND NUMBERS:

EELX 10000-10025, 10027-10097, 10100-10105, 10107-10112 (109 Cars)

USLX 46000-46004, 46006-46043, 46045-46051, 46053-46054, 46056-46085, 46087-46092, 46094-46099 (94 Cars)

SPECIFICATIONS DESIGNATED BY LESSEE:

None

INITIAL F.O.T. DELIVERY POINT:

All the Cars already are in Lessee's possession.

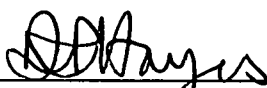
LEASE TERM:

The term of the Lease as to the Cars on Schedule No. 1.A. shall be extended through and including November 11, 1993.


MONTHLY RENTAL:

The fixed rent ("Fixed Rent") shall, retroactive to November 12, 1988, be for each full calendar month ("Month"). The Fixed Rent for any Car which is not subject to the Lease for an entire Month shall be prorated at

ITEL RAILCAR CORPORATION

By: 
Title: President
Date: 1/10/89

ISLAND CREEK CORPORATION

By: 
Title: VICE PRESIDENT AND TREASURER
Date: 1/5/89

STATE OF CALIFORNIA)
) ss:
 COUNTY OF SAN FRANCISCO)

On this 10th day of January, 1988, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Railcar Corporation, that the foregoing Schedule No. 1.A. was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Patricia M. O'Grady
 Notary Public

STATE OF California)
) ss:
 COUNTY OF Los Angeles)

On this 5th day of January, 1988, before me personally appeared R B Cassiel, to me personally known, who being by me duly sworn says that such person is Vice President and Treasurer of Island Creek Corporation, that the foregoing Schedule No. 1.A. was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Sharon C. Fierro
 Notary Public